

**875—218.103(91D) Primary duty.** A determination of whether an employee has management as the primary duty must be based on all the facts in a particular case. The amount of time spent in the performance of the managerial duties is a useful guide in determining whether management is the primary duty of an employee. In the ordinary case, primary duty means the major part, or over 50 percent, of the employee's time. Thus, an employee who spends over 50 percent of the time in management would have management as the primary duty. Time alone, however, is not the sole test, and in situations where the employee does not spend over 50 percent of the time in managerial duties, the employee might nevertheless have management as the primary duty if the other pertinent factors support the conclusion. Some of these pertinent factors are the relative importance of the managerial duties as compared with other types of duties, the frequency with which the employee exercises discretionary powers, the employee's relative freedom from supervision, and the relationship between the employee's salary and the wages paid other employees for the kind of nonexempt work performed by the supervisor.

SOURCE: 29 CFR 541.103.